**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| DIRK CLINTON et al.,<br>Plaintiff and Respondents,<br>v.<br>AMAZON LOGISTICS, INC., et al.,<br>Defendants and Appellants. | G064704<br>(Super. Ct. No. JCCP 5078)<br>O P I N I O N |

Appeal from an order of the Superior Court of Orange County, Melissa R. McCormick, Judge. Affirmed. Application by Appellants to file further briefing in response to Respondents' answer to amicus brief. Denied.

Gibson, Dunn & Crutcher, Megan Cooney, Min Soo Kim, Lucas C. Townsend, Dhananjay S. Manthripragada and Patrick J. Fuster for Defendants and Appellants.

Gupta Wessler, Jennifer D. Bennett, Jessica Garland and Gabriel Chess;[1] Blumenthal Nordrehaug Bhowmik De Blouw, Norman B. Blumenthal, Kyle Roald Nordrehaug and Aparajit Bhowmik; Burton Employment Law and Jocelyn Burton; Haines Law Group, Paul K. Haines and Sean M. Blakely; Lavi & Ebrahimian and Brett Donald Szmanda; Patterson Law Group and James R. Patterson; Kesluk, Silverstein, Jacob & Morrison, Douglas N. Silverstein and Lauren Morrison; Zimmerman Reed and Jeff S. Westerman for Plaintiffs and Respondents.

Mayer Brown and Archis A. Parasharami for Amici Curiae on behalf of the Chamber of Commerce of the United States of America, the Retail Litigation Center, Inc. and the California Employment Law Council.[2]

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Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (collectively, Amazon) appeal the trial court's order denying their motion to compel arbitration of plaintiffs' individual claims under PAGA (the

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[1] During the pendency of the appeal, attorney Gabriel Chess left the law firm of Gupta Wessler and was granted leave to withdraw as counsel for plaintiffs.

[2] With our permission, the Chamber of Commerce of the United States of America, the Retail Litigation Center, Inc., and the California Employment Law Council collectively filed a brief in support of appellants as *amici curiae*. We invited the parties to respond to the amicus curiae brief pursuant to the California Rules of Court, rule 8.200(c)(6). Plaintiffs did so, and Amazon did not. Amazon then filed a request to file a brief addressing plaintiffs' response to the amicus brief, contending plaintiffs' response was effectively a sur-reply to Amazon's reply brief on appeal and cited new authority not cited in plaintiffs' respondents' brief. Plaintiffs opposed the request. We deny Amazon's request.

Arbitration Motion).[3] Plaintiffs are part of a class of so-called last-leg or last-mile delivery drivers, who deliver within California interstate packages and other goods ordered by customers of Amazon. The trial court concluded plaintiffs are a "class of workers engaged in . . . interstate commerce" and therefore are exempt from arbitration pursuant to section 1 of the Federal Arbitration Act (FAA). (9 U.S.C. § 1.) We agree and affirm the trial court's order.[4] We find persuasive and follow the Ninth Circuit's decisions in *Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904 (*Rittmann*), and *Carmona Mendoza v. Domino's Pizza, LLC* (9th Cir. 2023) 73 F.4th 1135 (*Carmona*), as well as other federal circuit and California courts that held local delivery drivers like plaintiffs, who do not cross borders but nonetheless transport interstate goods to the final leg to their destinations, fall within section 1's exemption.

## FACTS AND PROCEDURAL HISTORY

### *A. The Coordinated Proceedings*

Plaintiffs Dirk Clinton, Linda Luckett, Renee Jordan, Persis Knipe, Jennifer Romero, and Antonia Dias worked as local delivery drivers

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[3] Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.)

[4] The issue raised in this appeal is currently pending before the United States Supreme Court in *Brock v. Flower Foods, Inc.* (10th Cir. 2024) 121 F.4th 753 (certiorari granted October 20, 2025, __ U.S. __ (case No. 24-935)). We take judicial notice of the Supreme Court docket description of the question presented in *Brock*: "Are workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders—'transportation workers' 'engaged in foreign or interstate commerce' for purposes of the Federal Arbitration Act's § 1 exemption." (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

for Amazon as part of the Amazon Flex program.[5] Plaintiffs filed separate lawsuits against Amazon in multiple counties in California alleging, among other things, that Amazon misclassified them as independent contractors. In May 2020, the Judicial Council ordered the cases coordinated and assigned the case for handling by the Orange County Superior Court.[6] The operative pleadings are plaintiffs' amended consolidated complaint (Amended Complaint) and Amazon's answer to it.

*B. The Arbitration Motion*

Amazon moved to compel arbitration of plaintiffs' individual PAGA claims pursuant to *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. According to Amazon, plaintiffs agreed to binding arbitration of their individual PAGA claims as part of the "Amazon Flex Independent Contractor Terms of Service" (TOS), which plaintiffs accepted when they downloaded the Amazon Flex app and signed on to be delivery drivers.[7] Specifically, plaintiffs agreed to arbitrate, on an individual basis, "any

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[5] Describing the nature of their work as Amazon delivery drivers, plaintiffs allege Amazon has "a vast network of regional distribution centers across the country and throughout California, to which [their] suppliers' and other sellers' products are shipped from all over to the world" and that "[a]s Amazon Flex drivers, [plaintiffs] use their personal vehicles to complete the last delivery phase for these products, from [Amazon's] regional distribution centers to [Amazon's] customers."

[6] Coordination allows two or more civil cases that are pending in different counties and share common questions of fact or law to be joined in one court. (Code Civ. Proc., § 404.)

[7] Amazon refers to delivery drivers like plaintiffs, who sign up through the Amazon Flex program and use their own vehicles to deliver packages, as "Delivery Partners."

dispute or claim, whether based on contract, common law, or statute, arising out of or relating in any way to this [TOS]." (Capitalization omitted.) Plaintiffs opposed Amazon's Arbitration Motion on the ground they are exempt from arbitration pursuant to section 1 of the FAA.[8]

On August 29, 2024, the trial court heard argument and took the matter under submission. The court issued its statement of decision on September 4, 2024, denying the Arbitration Motion. The court ruled: "[P]laintiffs belong to a class of workers who deliver in California goods ordered from Amazon. As Amazon acknowledges, many of the goods plaintiffs delivered were manufactured outside of California or were otherwise outside of California at some point. Plaintiffs delivered goods that had been distributed to fulfillment centers, including from out of state, and transported the goods for the last leg of their journeys to their ultimate destinations, which is a part of a continuous interstate transportation of goods. Plaintiffs thus are transportation workers engaged in interstate commerce and exempt from the FAA."

Amazon timely appealed.

## DISCUSSION

### I.

### STANDARD OF REVIEW

"'"There is no uniform standard of review for evaluating an order denying a motion to compel arbitration."'" (*Franco v. Greystone Ridge Condominium* (2019) 39 Cal.App.5th 221, 227.) If the order rests solely on a

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[8] Plaintiffs also argued PAGA claims are excluded from the scope of the parties' arbitration agreement. The trial court did not reach this issue in light of its conclusion that plaintiffs are exempt from arbitration under section 1 of the FAA.

decision of law, the de novo standard of review applies. (*Ibid.*; *Muro v. Cornerstone Staffing Solutions, Inc.* (2018) 20 Cal.App.5th 784, 789.) "'Decisions on issues of fact are reviewed for substantial evidence.'" (*Muro, supra,* at p. 790.) Under the substantial evidence standard of review, "'[i]f the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence.'" (*Frei v. Davey* (2004) 124 Cal.App.4th 1506, 1512.)

II.

FAA EXEMPTION[9]

Section 1 of the FAA creates an exemption to the FAA's general rule of applicability for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." (9 U.S.C. § 1.) "Section 1 exempts from the FAA only contracts of employment of transportation workers." (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119.)

In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 455–456 (*Saxon*), the United States Supreme Court held that whether the exemption applies to a specific class of workers turns on a two-step analysis. First, the court must "defin[e] the relevant 'class of workers' to which [Plaintiffs] belong[ ]." (*Id.* at p. 456.) In so doing, the court considers "the actual work that the members of the class, as a whole, typically carry out. . . . not what [the employer] does generally." (*Ibid.*) Second, the court determines whether that "class of workers [is] directly involved in transporting goods across state

[9] The parties do not dispute the FAA applies to the arbitration agreements.

or international borders." (*Id.* at p. 457.) To be directly involved in interstate commerce, that class of workers "'must at least play a direct and "necessary role in the free flow of goods" across borders.'" (*Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 256 (*Bissonnette*), quoting *Saxon, supra*, 596 U.S. at p. 458.)

Section 1's exemption has a "'narrow' scope." (*Bissonette, supra,* 601 U.S. at p. 256.) Nevertheless, a "transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by [section] 1 of the Act." (*Ibid.*)

*A. Step 1: Defining the Class of Workers*

"We begin by defining the relevant 'class of workers' to which [plaintiffs] belong[]." (*Saxon, supra*, 596 U.S. at p. 455.) The actual work plaintiffs perform as delivery partners for Amazon is not in dispute. Plaintiffs perform local pickup and delivery within California of certain goods and packages ordered by Amazon's customers, many of which were manufactured outside California or otherwise originated outside California and crossed state lines before plaintiffs picked them up for delivery.

Based on the nature of the work performed by delivery partners for Amazon, we define the class of workers as workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders.[10]

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[10] Although the work performed by Amazon's delivery partners is not in dispute, the parties could not agree in the proceedings below on how to define the class of workers for purposes of determining the applicability of the section 1 exemption. Amazon contended the class of workers should be defined as "local delivery drivers." Plaintiffs argued the class of workers are those who "load, transport, unload, and deliver interstate packages." The trial court adopted neither definition, instead defining the class of workers as those who "deliver in California goods ordered from Amazon." At oral

*B. Step 2: Whether the Workers are Directly Involved in Interstate Commerce*

Next, we consider whether the defined class of workers "engaged in . . . interstate commerce" within the meaning of section 1. (9 U.S.C. § 1.) To answer that question, we ask whether the class of workers played a "direct and 'necessary role in the free flow of goods' across borders." (*Saxon, supra,* 596 U.S. at p. 458; see *Circuit City Stores, Inc. v. Adams, supra,* 532 U.S. at p. 121 [in enacting the section 1 exemption to the FAA, Congress was demonstrating its "concern with transportation workers and their necessary role in the free flow of goods"].) Based on the undisputed facts before the trial court, we conclude they did.

In 2020, prior to the United States Supreme Court's decision in *Saxon, supra,* 596 U.S. 450, the Ninth Circuit held delivery drivers (like plaintiffs here) who contracted with Amazon to perform local deliveries of goods via the Amazon Flex app belonged to a class of workers engaged in interstate commerce. (*Rittmann, supra,* 971 F.3d at pp. 907, 915, 919.) The court reasoned that such delivery drivers "pick up packages that have been distributed to Amazon warehouses, certainly across state lines, and transport them for the last leg of the shipment to their destination," so that "[a]lthough Amazon contend[ed] that [Amazon Flex] delivery providers are 'engaged in local, intrastate activities,' the Amazon packages they carry are goods that remain in the stream of interstate commerce until they are delivered." (*Id.* at p. 915.) The court explained the interstate transactions did not conclude until the packages were delivered. (*Id.* at pp. 915–916.) *Rittmann* reviewed both

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argument, counsel for both parties agreed the class of workers defined in the question presented to the Supreme Court in *Brock* also accurately defines the class of workers at issue in this appeal. We agree and therefore use the same definition here.

state and federal cases interpreting section 1's language and concluded, "[f]ederal district courts and state courts have also understood [section] 1 not to require that a worker cross state lines." (*Id.* at p. 911.) Further, *Rittmann* noted that courts that have interpreted the meaning of the phrase "engaged in commerce" in the context of other statutes did not limit that language to instances where workers physically crossed state lines.[11]

Then, in 2022, the United States Supreme Court decided *Saxon*, which became the leading case on section 1's exemption. (*Saxon, supra*, 596 U.S. 450.) The class of workers in *Saxon* were local airline cargo loaders who loaded cargo on and off airplanes that travel in interstate commerce. (*Id.* at pp. 458–459, 463.) The Supreme Court held such workers were exempted under section 1 from the FAA's coverage. (*Id.* at p. 463.) In so doing, however, the court expressly declined to decide whether workers who carry out "duties further removed from the channels of interstate commerce or the actual crossing of borders," are exempt under section 1, citing as an example the last-leg delivery drivers that were at issue in *Rittmann, supra,* 971 F.3d 904. (*Saxon, supra*, 596 U.S. at p. 457, fn. 2.)

After deciding *Saxon*, the United States Supreme Court granted certiorari on a subsequent decision by the Ninth Circuit holding local delivery

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[11] For example, *Rittmann* examined cases interpreting the Federal Employees Liability Act (45 U.S.C. § 51, FELA). (*Rittmann, supra,* 971 F.3d at pp. 910, 912–913, citing *Phila. & Read. Ry. Co. v. Hancock* (1920) 253 U.S. 284, 286 [railroad worker injured while operating a train carrying coal, some of which would ultimately be shipped out of state, was engaged in interstate commerce for FELA purposes because "the shipment was but a step in the transportation of the coal to real and ultimate destinations in another [s]tate"] and *Waithaka v. Amazon.com, Inc.* (1st Cir. 2020) 966 F.3d 10, 17–23 ["[W]orkers 'engaged in interstate commerce'" included "those who were not involved in transport themselves but were in positions 'so closely related' to interstate transportation 'as to practically be a part of it'"].)

drivers for Domino's Pizza are exempt under section 1 of the FAA and remanded the case with directions to reconsider the decision in light of *Saxon*.[12] In 2023, the Ninth Circuit reconsidered and *reaffirmed* its decision in light of *Saxon*. (*Carmona, supra,* 73 F.4th at pp. 1137–1139.) The court noted its initial decision had "squarely rested" (*id.* at p. 1137) upon *Rittmann* and, after evaluating *Rittmann* and finding it not inconsistent with *Saxon*, it held *Rittmann* "continue[d] to control [the] analysis." (*Carmona, supra,* at pp. 1138–1139.) The court reiterated that the "critical question" (*id.* at p. 1137) in assessing whether workers are engaged in interstate commerce "is whether the workers are actively 'engaged in transportation' of goods in interstate commerce and play a direct and 'necessary role in the free flow of goods across borders.'" (*Ibid.*, quoting *Saxon, supra,* 596 U.S. at p. 458.)

We agree with the analysis in *Rittmann* and *Carmona*—and with the analysis conducted by the trial court below. We therefore conclude the class of plaintiffs here were engaged in interstate commerce when they participated in the last-mile delivery of Amazon packages, many of which, as Amazon acknowledged in its reply to plaintiffs' opposition to the Arbitration Motion, were manufactured outside California or otherwise originated out of state. (See also, *Betancourt v. Transportation Brokerage Specialists, Inc.* (2021) 62 Cal.App.5th 552, 558–561 [Amazon's "last-mile" delivery driver was exempt from the FAA as a transportation worker engaged in interstate

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[12] In *Carmona v. Domino's Pizza, LLC* (9th Cir. 2021) 21 F.4th 627, judgment vacated and cause remanded for further consideration in light of *Saxon, supra,* 596 U.S. 450, the 9th Circuit affirmed the trial court's determination that employees of Domino's Pizza who performed local deliveries of pizza ingredients that had been delivered from outside California to an in-state supply center were exempt from the FAA under section 1. (*Id.* at p. 628.)

commerce]; *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274, 284 [a delivery driver who made only intrastate deliveries came within the transportation worker exemption because he delivered beverages originating from out of state].)

We reject Amazon's argument that, because a large percentage of its goods had already been received at the local warehouse in California and were "at rest" when the orders are placed, they were not on a continuous cross-border journey to the California customers who purchased them. We agree with the Ninth Circuit's conclusion that a "pause in the journey of the goods at the warehouse alone [does not] remove them from the stream of interstate commerce." (*Carmona, supra,* 73 F.4th at p. 1138.) The warehouse stop is part of the journey of the product to its ultimate recipient.[13] Without last-mile delivery drivers, such as plaintiffs, the transportation of these packages would be incomplete. Similarly, the fact that some of the goods plaintiffs delivered were from local California suppliers and did not cross borders does not change the outcome. (See *Rittmann, supra*, 971 F.3d at p. 917, fn. 7 [explaining that Amazon package delivery drivers are engaged in interstate commerce "even if that engagement also involves intrastate activities"].)

Finally, we reject Amazon's argument that the trial court failed to focus on the work actually performed by plaintiffs and instead focused on the nature of Amazon's business generally. To the contrary, the trial court

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[13] As the trial court noted in its Statement of Decision, the declaration from Amazon's own witness "describes the interconnected chain of operations by which Amazon moves goods purchased by customers 'around the world' . . . from their initial locations to their ultimate destinations—the customers who ordered the goods."

focused on the work plaintiffs perform and properly understood it to be "part of a continuous interstate transportation of goods."

In sum, we conclude plaintiffs are exempt from the FAA under section 1 because the arbitration agreements they entered into with Amazon were a "contract of employment" and they belong to a class of transportation workers "engaged in interstate commerce."

DISPOSITION

The order is affirmed. Respondents shall recover costs on appeal.

GOODING, J.

WE CONCUR:

DELANEY, ACTING P. J.

BANCROFT, J.*

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.